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April 27, 1995

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William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

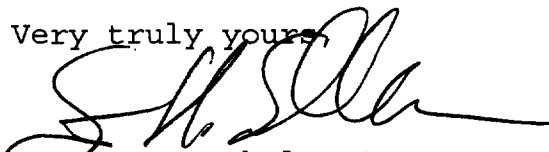
Re: Amendment of Section 73.606(b), Table  
of Allotments, Television Broadcast  
Stations (Albion, Nebraska)  
(MM Docket No. 94-143)

Dear Mr. Caton:

Enclosed on behalf of Citadel Communications Co., Ltd.  
is an original and four copies of its Opposition to Application  
for Review of Busse Broadcasting Corporation in the above-  
referenced rulemaking proceeding.

In the event there are any questions concerning this  
matter, please do not hesitate to call.

Very truly yours,

  
Steven H. Schulman\*  
of LATHAM & WATKINS

Enclosure

cc: Mr. John A. Karousos, Acting Chief,  
Allocations Branch  
Mr. Philip J. Lombardo  
Eric L. Bernthal  
Kevin C. Boyle

\* Admitted in Maryland only

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.606(b), )  
Table of Allotments, )  
Television Broadcast Stations. )  
(Albion, Nebraska) )

MM Docket No. 94-143

DOCKET FILE COPY ORIGINAL

TO: The Commission

**OPPOSITION OF CITADEL COMMUNICATIONS COMPANY, LTD. TO  
APPLICATION FOR REVIEW OF BUSSE BROADCASTING CORPORATION**

Busse's Application for Review asks the Commission to reverse the staff's allotment decision by ignoring its well established policies regarding Advanced Television ("ATV") implementation and the economic impact of new broadcast allotments on existing stations.<sup>1/</sup> Both issues are irrelevant and beyond the scope of this proceeding. Moreover, Busse lacks standing to seek Commission review of the allotment decision. In sum, the Application offers nothing that has not been raised *ad nauseum* before the Commission at every level in every proceeding even tangentially relevant to the allotment of Channel 24+ to Albion.<sup>2/</sup>

1. Busse also raises the objection that the instant Report and Order imposes no requirement that Citadel continue to provide ABC network service to Albion via Channel 24+. Application at ¶ 3-4. As Busse well knows, this proceeding is inextricably intertwined with the Commission's decision to allocate Channel 8 to Lincoln in order to allow Citadel to relocate KCAN from Albion to Lincoln, which continues to require that Citadel provide ABC service to Albion. *See In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Albion, Lincoln, and Columbus, Nebraska)*, 8 FCC Rcd 2876 (1993) ("Albion-Lincoln-Columbus Order"). As such, Busse's objection is not well-founded.
2. The allotment of Channel 24+ to Albion will allow the prompt initiation of competitive commercial television service in Lincoln (where Busse now operates the sole commercial station) by permitting the relocation of Citadel's KCAN from Albion to Lincoln. Busse has filed no fewer than *ten* other pleadings in

## DISCUSSION

Busse's claim that the allotment would have a negative effect upon "the coming conversion to a Digital Television System" is a red herring, and the staff properly rejected it. As part of a lengthy ATV rulemaking proceeding, the Commission identified certain markets where ATV implementation could cause a shortage of broadcast spectrum. *See In the Matter of Advanced Television Systems, First Report and Order*, 5 FCC Rcd 5627 (1990). Specified areas around these markets were established as "ATV Freeze Zones," where new channel allotments would be placed on hold pending ATV implementation. *Id.* at n.4. Albion is far away from any ATV Freeze Zone, and Busse offers nothing to suggest that this was error on the part of the Commission. *Id.* Moreover, the instant narrow allotment rulemaking is not the proper proceeding to consider changes to ATV policy. *See* Administrative Procedure Act, 5 U.S.C. § 553 (NPRM must give notice of issues to be considered). In any case, Busse offers no support for its assertion that the allocation of Channel 24+ to Albion would interfere with ATV implementation.

Busse's second basis for review is its claim that the allotment "makes no economic sense." Application ¶ 6. The staff rightly dismissed this argument out of hand as irrelevant under applicable Commission policy, and Busse does not dispute

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an effort to delay introduction of competition in Lincoln, including: comments in the instant Channel 24 allotment proceedings (MM Docket No. 94-143) (February 13, 1995); a Petition for Reconsideration of the Commission's Albion-Lincoln-Columbus Order, and a Reply to Opposition to Petition for Reconsideration; a Petition to Deny Citadel's application to construct Channel 18 at Albion (File No. BMPCT-930726KH); an Informal Objection to Citadel's application to relocate KCAN-TV Channel 8 to Lincoln (File No. BMPCT-930726KI), a "Supplement" (filed February 14, 1995) and a "Second Supplement" (filed April 20, 1995) to that Informal Objection; and a Petition for Stay of the licensing proceedings (filed November 23, 1994), an unauthorized "Reply" in connection with that petition (filed December 7, 1994), and, finally, an unauthorized "Supplement" to that petition (filed December 21, 1994). In addition, in its Application Busse has incorporated its Petition for Reconsideration in MM Docket 91-304. Citadel likewise incorporates all its pleadings in MM Docket 91-304.

this conclusion. *Id.* at ¶ 6-7 (admitting that the Commission has "determined that economic issues were not relevant in a licensing or allotment context"). Busse further acknowledges that "this may not be the proper forum" for review of this policy. Indeed, it is not; as is the case with Busse's urged revision of ATV policy, abandonment in this proceeding of longstanding Commission policy rejecting consideration of economic issues in broadcast allotment proceedings would violate the Administrative Procedure Act. *See* 5 U.S.C. § 553. Moreover, Busse's proposal flies squarely in the face of the Commission's many assertions that it prefers to leave such matters to be resolved in the marketplace. *See FCC Service Rules on Satellite DAB Expected in 60 Days*, Comm. Daily, April 24, 1995 (quoting FCC Chmn. Reed Hundt: "government should be out of the business of deciding who should win in the marketplace").

On the merits, Busse's view of the economic feasibility of the Citadel's proposed station at Channel 24+ in Albion is misguided. Citadel has operated KCAN-TV at Channel 8 in Albion as a satellite station of KCAU, Sioux City, Iowa, since 1986, and, after the relocation of Channel 8 to Lincoln, will operate a similar satellite television service on Channel 24+. Citadel sees no economic barriers to these plans; rather, they are more feasible than the current operation.<sup>3/</sup>

The Application is procedurally flawed as well, as Busse has not shown that it is "aggrieved" by the allotment decision, as required by FCC rules. *See* 47 C.F.R. § 1.115(a) ("Any person aggrieved by an action taken pursuant to delegated

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3. Whether the application of Fant Broadcasting of Nebraska to operate a full-service station on Channel 18 in Albion is economically feasible is not at issue in this proceeding.

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authority may file an application requesting review of that action by the Commission." ). A party must demonstrate "a concrete impairment of its economic interest" to show that it has been aggrieved by a ruling. *See In the Matter of Pan American Satellite Corporation*, 1986 FCC Lexis 3401, \*56 & n.34 (1986). Busse has not and cannot make such a showing in this case.<sup>4/</sup> Busse operates stations that are far from Albion; thus, the allotment of Channel 24+ to Albion would not harm the economic interests of Busse. Its Application for Review must therefore be denied for lack of standing.<sup>5/</sup>

### CONCLUSION

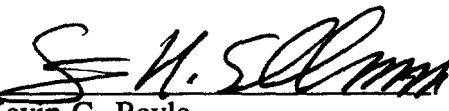
Busse has offered no adequate basis for its request that the determination to allot Channel 24+ to Albion be reversed. The allotment is a judicious allocation of spectrum which avoids a comparative hearing for Channel 18 at a time when such hearings have been suspended indefinitely.<sup>6/</sup> Moreover, the allotment allows the Commission to proceed with its ongoing plan to change the community of license of KCAN from Albion to Lincoln. The abject lack of substance in Busse's filing belies delay as its primary purpose. Competitive service in Lincoln has been delayed long enough. Accordingly, Citadel respectfully requests that

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4. Busse's true economic interest is in avoiding competition in Lincoln. As shown earlier, Busse has taken full advantage of the opportunity, to participate in MM Docket 91-304, which is the proceeding that will result in such competition. *See supra n.1.*
  5. Neither would Busse have standing to seek judicial review of the allotment decision. *See Competitive Enterprise Institute v. Department of Transportation*, 856 F.2d 1563, 1565 (D.C. Cir. 1988) (petitioners had no standing to seek judicial review "merely because they participated" in the rulemaking proceeding).
  6. Fant Broadcasting of Nebraska, Inc. filed a competing application for Channel 18, proposing a full-service station (File No. BPCT-931115KF). Due to the D.C. Circuit's decision in *Bechtel v. FCC*, 10 F.3d 875 (1993), the Commission is not currently designating applications for comparative review. *See Report and Order* at ¶ 3.

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Busse's Application for Review promptly be denied, that the other pending petitions, objections and applications for review blocking new service in Lincoln be dismissed, and that the Commission grant Citadel's applications for construction permits (FCC File Nos. BPCT-930726KI and BPCT-930726KH) for Citadel's proposed facilities in Lincoln on Channel 8 and in Albion on Channel 24+.

Respectfully submitted,

By:   
Kevin C. Boyle  
Steven H. Schulman \*  
of LATHAM & WATKINS  
1001 Pennsylvania Ave., N.W.  
Suite 1300  
Washington, D.C. 20004  
(202)637-2200

Dated: April 27, 1995

\* Admitted in Maryland only

## CERTIFICATE OF SERVICE

I, Steven H. Schulman, hereby certify that the foregoing Opposition of Citadel Communications Company, Ltd. has been served via first class United States mail, postage prepaid, this 27th day of April, 1995, on the following:

Fant Broadcasting of Nebraska, Inc.  
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Rosslyn, Virginia 22209

Busse Broadcasting, Inc.  
% Pepper & Corazzini, L.L.P.  
200 Montgomery Building  
1776 K Street, N.W.  
Washington, D.C. 20006

Pulitzer Broadcasting Company  
% Verner, Liipfert, Bernhard, McPherson & Hand  
901 15th Street, NW  
Washington, D.C. 20005

John A. Karousos, Chief\*  
Mass Media Bureau  
Allocations Branch  
2025 M Street, NW, Room 8322  
Washington, D.C. 20554

  
Steven H. Schulman

\* Delivered by hand